

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1094**

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**Introduced by Assembly Member Conway**

February 27, 2009

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An act to amend Sections 1798.80, 1798.81, 1798.84, ~~and 1983~~ *1980, 1983, 1993, and 1993.03* of the Civil Code, relating to personal information.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as amended, Conway. Disposal of personal information.

Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information that is no longer to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. Existing law provides for specified civil remedies for a violation of these provisions.

This bill would, instead, require a business to take all reasonable steps to dispose, or arrange for the disposal, of ~~an individual's~~ *customer* records within its custody or control containing personal information when the records are no longer to be retained by the business by taking any of the actions described above. The bill would exempt from these provisions information that is made available to the general public from federal, state, or local government records. The bill would provide that a cause of action shall not lie against a business that comes into

possession of abandoned records containing personal information and that disposes of those records in accordance with these provisions. The bill would set forth findings regarding records that end up in the possession of a storage company or commercial landlord, and would provide that it is the intent of the Legislature to create a safe harbor for such a record custodian who properly disposes of the records.

Existing law requires a landlord, if personal property remains on the premises after a tenancy *or commercial tenancy* has terminated and the premises have been vacated by the tenant, to give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property, as specified.

This bill would provide that, if the property consists of records, the tenant shall be ~~deemed~~ *presumed* to be the owner of the property.

*This bill would define “records” as it relates to these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1798.80 of the Civil Code is amended  
2 to read:

3 1798.80. The following definitions apply to this title:

4 (a) “Business” means a sole proprietorship, partnership,  
5 corporation, association, or other group, however organized and  
6 whether or not organized to operate at a profit, including a financial  
7 institution organized, chartered, or holding a license or  
8 authorization certificate under the law of this state, any other state,  
9 the United States, or of any other country, or the parent or the  
10 subsidiary of a financial institution. The term includes an entity  
11 that disposes of records.

12 (b) “Records” means any material, regardless of the physical  
13 form, on which information is recorded or preserved by any means,  
14 including in written or spoken words, graphically depicted, printed,  
15 or electromagnetically transmitted. “Records” does not include  
16 publicly available directories containing information an individual  
17 has voluntarily consented to have publicly disseminated or listed,  
18 such as name, address, or telephone number.

19 (c) “Customer” means an individual who provides personal  
20 information to a business for the purpose of purchasing or leasing  
21 a product or obtaining a service from the business.

1 (d) “Individual” means a natural person.

2 (e) “Personal information” means any information that identifies,  
3 relates to, describes, or is capable of being associated with, a  
4 particular individual, including, but not limited to, his or her name,  
5 signature, social security number, physical characteristics or  
6 description, address, telephone number, passport number, driver’s  
7 license or state identification card number, insurance policy  
8 number, education, employment, employment history, bank account  
9 number, credit card number, debit card number, or any other  
10 financial information. “Personal information” does not include  
11 publicly available information that is lawfully made available to  
12 the general public from federal, state, or local government records.

13 SEC. 2. Section 1798.81 of the Civil Code is amended to read:

14 1798.81. A business shall take all reasonable steps to dispose,  
15 or arrange for the disposal, of ~~an individual’s~~ *customer* records  
16 within its custody or control containing personal information when  
17 the records are no longer to be retained by the business by (a)  
18 shredding, (b) erasing, or (c) otherwise modifying the personal  
19 information in those records to make it unreadable or  
20 undecipherable through any means.

21 SEC. 3. Section 1798.84 of the Civil Code is amended to read:

22 1798.84. (a) Any waiver of a provision of this title is contrary  
23 to public policy and is void and unenforceable.

24 (b) Any ~~individual~~ *customer* injured by a violation of this title  
25 may institute a civil action to recover damages.

26 (c) In addition, for a willful, intentional, or reckless violation  
27 of Section 1798.83, a customer may recover a civil penalty not to  
28 exceed three thousand dollars (\$3,000) per violation; otherwise,  
29 the customer may recover a civil penalty of up to five hundred  
30 dollars (\$500) per violation for a violation of Section 1798.83.

31 (d) Unless the violation is willful, intentional, or reckless, a  
32 business that is alleged to have not provided all the information  
33 required by subdivision (a) of Section 1798.83, to have provided  
34 inaccurate information, failed to provide any of the information  
35 required by subdivision (a) of Section 1798.83, or failed to provide  
36 information in the time period required by subdivision (b) of  
37 Section 1798.83, may assert as a complete defense in any action  
38 in law or equity that it thereafter provided regarding the information  
39 that was alleged to be untimely, all the information, or accurate  
40 information, to all customers who were provided incomplete or

1 inaccurate information, respectively, within 90 days of the date  
2 the business knew that it had failed to provide the information,  
3 timely information, all the information, or the accurate information,  
4 respectively.

5 (e) Any business that violates, proposes to violate, or has  
6 violated this title may be enjoined.

7 (f) (1) A cause of action shall not lie against a business that  
8 comes into possession of abandoned records containing personal  
9 information and that disposes of those records ~~in accordance with~~  
10 ~~Section 1798.81~~ *by shredding, erasing, or otherwise modifying*  
11 *the personal information in the records to make it unreadable or*  
12 *undecipherable through any means.*

13 (2) The Legislature finds and declares that, when records  
14 containing personal information are abandoned by a business, they  
15 often end up in the possession of a storage company or commercial  
16 landlord. It is the intent of the Legislature in paragraph (1) to create  
17 a safe harbor for such a record custodian who properly disposes  
18 of the records in accordance with ~~Section 1798.81~~ *paragraph (1).*

19 (g) A prevailing plaintiff in any action commenced under  
20 Section 1798.83 shall also be entitled to recover his or her  
21 reasonable attorney's fees and costs.

22 (h) The rights and remedies available under this section are  
23 cumulative to each other and to any other rights and remedies  
24 available under law.

25 *SEC. 4. Section 1980 of the Civil Code is amended to read:*

26 1980. As used in this chapter:

27 (a) "Landlord" means any operator, keeper, lessor, or sublessor  
28 of any furnished or unfurnished premises for hire, or his agent or  
29 successor in interest.

30 (b) "Owner" means any person other than the landlord who has  
31 any right, title, or interest in personal property.

32 (c) "Premises" includes any common areas associated therewith.

33 (d) "Reasonable belief" means the actual knowledge or belief  
34 a prudent person would have without making an investigation  
35 (including any investigation of public records) except that, where  
36 the landlord has specific information indicating that such an  
37 investigation would more probably than not reveal pertinent  
38 information and the cost of such an investigation would be  
39 reasonable in relation to the probable value of the personal property  
40 involved, "reasonable belief" includes the actual knowledge or

1 belief a prudent person would have if such an investigation were  
2 made.

3 (e) *“Records” means any material, regardless of the physical*  
4 *form, on which information is recorded or preserved by any means,*  
5 *including in written or spoken words, graphically depicted, printed,*  
6 *or electromagnetically transmitted. “Records” does not include*  
7 *publicly available directories containing information an individual*  
8 *has voluntarily consented to have publicly disseminated or listed,*  
9 *such as name, address, or telephone number.*

10 (e)

11 (f) *“Tenant” includes any paying guest, lessee, or sublessee of*  
12 *any premises for hire.*

13 ~~SEC. 4.~~

14 SEC. 5. Section 1983 of the Civil Code is amended to read:

15 1983. (a) Where personal property remains on the premises  
16 after a tenancy has terminated and the premises have been vacated  
17 by the tenant, the landlord shall give written notice to the tenant  
18 and to any other person the landlord reasonably believes to be the  
19 owner of the property. If the property consists of records, the tenant  
20 shall be ~~deemed~~ *presumed* to be the owner of the property.

21 (b) The notice shall describe the property in a manner reasonably  
22 adequate to permit the owner of the property to identify it. The  
23 notice may describe all or a portion of the property, but the  
24 limitation of liability provided by Section 1989 does not protect  
25 the landlord from any liability arising from the disposition of  
26 property not described in the notice except that a trunk, valise,  
27 box, or other container which is locked, fastened, or tied in a  
28 manner which deters immediate access to its contents may be  
29 described as such without describing its contents. The notice shall  
30 advise the person to be notified that reasonable costs of storage  
31 may be charged before the property is returned, where the property  
32 may be claimed, and the date before which the claim must be made.  
33 The date specified in the notice shall be a date not less than 15  
34 days after the notice is personally delivered or, if mailed, not less  
35 than 18 days after the notice is deposited in the mail.

36 (c) The notice shall be personally delivered to the person to be  
37 notified or sent by first-class mail, postage prepaid, to the person  
38 to be notified at his or her last known address and, if there is reason  
39 to believe that the notice sent to that address will not be received  
40 by that person, also to any other address known to the landlord

1 where the person may reasonably be expected to receive the notice.  
2 If the notice is sent by mail to the former tenant, one copy shall  
3 be sent to the premises vacated by the tenant.

4 *SEC. 6. Section 1993 of the Civil Code is amended to read:*

5 1993. This chapter shall only apply to commercial real property.  
6 As used in this chapter:

7 (a) “Commercial real property” has the meaning specified in  
8 subdivision (d) of Section 1954.26. For purposes of this chapter,  
9 commercial real property shall not include self-storage units.

10 (b) “Landlord” means any operator, keeper, lessor, or sublessor  
11 of any furnished or unfurnished premises for hire, or his or her  
12 agent or successor in interest.

13 (c) “Owner” means any person other than the landlord who has  
14 any right, title, or interest in property.

15 (d) “Premises” includes any common areas associated therewith.

16 (e) “Reasonable belief” means the actual knowledge or belief  
17 a prudent person would have without making an investigation,  
18 including any investigation of public records, except that, if the  
19 landlord has specific information indicating that an investigation  
20 would more probably than not reveal pertinent information and  
21 the cost of an investigation would be reasonable in relation to the  
22 probable value of the property involved, “reasonable belief”  
23 includes the actual knowledge or belief a prudent person would  
24 have if an investigation were made.

25 (f) “Records” means any material, regardless of the physical  
26 form, on which information is recorded or preserved by any means,  
27 including in written or spoken words, graphically depicted, printed,  
28 or electromagnetically transmitted. “Records” does not include  
29 publicly available directories containing information an individual  
30 has voluntarily consented to have publicly disseminated or listed,  
31 such as name, address, or telephone number.

32 (f)

33 (g) “Tenant” includes any lessee or sublessee of any commercial  
34 real property and its premises for hire.

35 *SEC. 7. Section 1993.03 of the Civil Code is amended to read:*

36 1993.03. (a) If property remains on the premises after a tenancy  
37 has terminated and the premises have been vacated by the tenant,  
38 the landlord shall give written notice to the tenant and to any other  
39 person the landlord reasonably believes to be the owner of the

1 property. *If the property consists of records, the tenant shall be*  
2 *presumed to be the owner of the property.*

3 (b) The notice shall describe the property in a manner reasonably  
4 adequate to permit the owner of the property to identify it. The  
5 notice may describe all or a portion of the property, but the  
6 limitation of liability provided by Section 1993.08 does not protect  
7 the landlord from any liability arising from the disposition of  
8 property not described in the notice, except that a trunk, valise,  
9 box, safe, vault, or other container that is locked, fastened, or tied  
10 in a manner that deters immediate access to its contents may be  
11 described as such without describing its contents. The notice shall  
12 advise the person to be notified that reasonable costs of storage  
13 may be charged before the property is returned, where the property  
14 may be claimed, and the date before which the claim must be made.  
15 The date specified in the notice shall be a date not less than 15  
16 days after the notice is personally delivered or, if mailed, not less  
17 than 18 days after the notice is deposited in the mail.

18 (c) The notice shall be personally delivered to the person to be  
19 notified or sent by first-class mail, postage prepaid, to the person  
20 to be notified at his or her last known address and, if there is reason  
21 to believe that the notice sent to that address will not be received  
22 by that person, also to any other address known to the landlord  
23 where the person may reasonably be expected to receive the notice.  
24 If the notice is sent by mail to the former tenant, one copy shall  
25 be sent to the premises vacated by the tenant.